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The time period for reply, if any, is set in the attached communication.

1 RECORD OF ORAL HEARING
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3 UNITED STATES PATENT AND TRADEMARK OFFICE
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5

6 BEFORE THE BOARD OF PATENT APPEALS
7 AND INTERFERENCES
8

9

10 Ex parte HISASHI NAKMURA, KOUJI TERAMI,
11 and TOSHIYUKI OKINO
12

13

14 Appeal 2008-5856
15 Application 10/073,959
16 Technology Center 2600
17

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19 Oral Hearing Held: December 9, 2008
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23 Before KENNETH W. HAIRSTON, ROBERT E. NAPPI, and JOHN A.
24 JEFFERY, Administrative Patent Judges
25

26 ON BEHALF OF THE APPELLANTS:
27

28 MICHAEL J. CARIDI, ESQ.
29 WESTERMAN, HATTORI, DANIELS & ADRIAN, LLP
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31 SUITE 700
32 WASHINGTON DC 20036
33

34 The above-entitled matter came on for hearing on Tuesday, December
35 9, 2008, commencing at 9:48 a.m., at The U.S. Patent and Trademark Office,
36 600 Dulany Street, Alexandria, Virginia, before Janice A. Salas.
37

1 THE CLERK: Calendar number 8, appeal number 2008-5856, Mr.
2 Caridi.

3 JUDGE HAIRSTON: You may begin.

4 MR. CARIDI: May it please the Board, my name is Michael Caridi.
5 I'm here on behalf of the appellants Mr. Nakamura, et al. I'm here on appeal
6 for a 102 rejection based on a single reference, the Sugawara reference.

7 I believe that the issues at law pertain only to generic 102
8 requirements, and that being that a claim's anticipated only if each and every
9 element as set forth in the claim is found either expressly or inherently
10 described in the single prior art reference, and we are obviously of the
11 opinion that Sugawara does not do that for the current claim as it stands.

12 There are two independent claims, claim 2 and 3; however, the feature
13 which I will be discussing is germane to both of those claims.

14 There's a requirement for a temperature sensor, an air pressure sensor,
15 a drive circuit of a cooling fan and a storage means or a device for claim 3
16 for storing a control table representing the relationship between the
17 temperature detected by the temperature sensor and the value of the control
18 voltage for the driving circuit of the cooling fan for each of a plurality of
19 classes into which the outside air pressure is divided.

20 I'll summarize by saying that there are three variables here -- the
21 temperature, the control voltage, and the air pressure -- and I'll refer to
22 application specification page 5, which describes a control table that is in
23 line with the claimed invention.

24 The outside air pressure is divided into three classes -- high, middle
25 and low classes -- and a detected temperature control voltage table
26 representing the relationship between a temperature detected by a

1 temperature sensor identified as reference number 2 for figure 3 and the
2 value of a control voltage for the control circuit 6 is prepared for each of the
3 classes.

4 The storage device 1-A stores the three types of detected temperature
5 control voltage tables, so in this example from the specification, the -- there
6 are actually three tables, one based on each of the pressure classifications --
7 low, middle and high.

8 Now, the current rejection cites to the Sugawara reference under 102
9 as teaching all of these features.

10 However, as I will put forward here, the examiner has in fact pulled
11 features from a variety of different embodiments, and these embodiments are
12 not truly related nor is any of the features in regard to claims 2 and 3 as I've
13 described inherent based on any of these embodiments.

14 Sugawara teaches a number of embodiments and provides a number
15 of disclosures regarding temperature value, air pressure value and fan output
16 adjustment; in other words, voltage.

17 The rejection under 102 attempts to coalesce these teachings into a
18 single disclosure; however, this coalition of teachings does not result in an
19 embodiment as we've described.

20 There are, in fact, three separate sections of Sugawara that the
21 examiner cites to as providing a single teaching.

22 The three separate sections of Sugawara -- I'll break them down -- is --
23 in regards to how they're referenced within the specification of the patent --
24 column 7 to 8 in figure 3, first section; column 10, lines 55 to column 11,
25 line 13 is the second section, which is describing a third embodiment; and
26 the third is column 15, lines 15 to 37, which is describing variations on a

1 seventh embodiment.

2 In regard to the first description, column 7 to 8 in figure 3, this is the
3 first section describing a general description and a first embodiment, and this
4 description relies on a first embodiment which utilizes a temperature
5 compensation feature based on air pressure.

6 And I'll refer to figure 4 of Sugawara, which has a S-10 step of
7 detecting the air pressure using a barometer and then an S-11, a temperature
8 compensation value T-zero is calculated, and only then is this calculation for
9 T-zero put into the main algorithm for step S-2 where T-zero is used to
10 calculate TC, temperature corrected, and only then is this temperature
11 corrected, this variable, used to either turn off or sound an alarm if a
12 temperature beyond set variables, temperature off, temperature alarm, has
13 been reached.

14 So here the temperature values ingested in part based on the detected
15 air pressure before a final temperature TC is utilized. There's no dividing of
16 the outside air pressure into a plurality of classes based on a relationship
17 between the two, temperature pressure is detected and the value of the
18 control voltage for a driving circuit.

19 The second description is column 10, lines 55 to column 11, which is
20 describing a third embodiment which does not require a barometer. In fact,
21 this section teaches that the air pressure sensor, S-10 of figure 4, is not
22 utilized.

23 Rather, this description teaches that an adjustment is made to the
24 temperature compensation value, T-zero, based on the linear charting of
25 voltage to air pressure per figure 8.

26 Hence, this embodiment does away with the air pressure sensor

1 altogether and there cannot be a table whereby air pressure's divided based
2 on detected temperature and control voltage. This embodiment in fact does
3 away with another featured requirement of the claim, which is the
4 barometer.

5 Finally, there's the third description which is cited by the examiner,
6 which is column 15, about lines 15 to 37. This is actually some catchall
7 paragraphs at the end of the specification, and the examiner cites the two
8 different catchalls that are not really related.

9 The first is at lines 15 through 21 of column 15, which simply states
10 that the Sugawara invention is not limited to a cooling fan but is usable for
11 other devices, such as heat sinks and heat pumps.

12 The second catchall is at lines 22 to 37. States that a device may be
13 set with a different reference pressure rather than atmospheric pressure if it
14 is known that the device will be at another altitude or pressure.

15 I interpret this to mean that if you know you're going to be shipping
16 your product to Denver or something like that, that you would adjust that
17 product beforehand to have this temperature correction automatically
18 installed, but there's no recitation here of putting a table into the memory.

19 JUDGE JEFFERY: Counsel, it does say in that passage, The table of
20 the temperature compensation values, T-zero, may of course be -- may of
21 course create at being based on the air pressure value at the position on air
22 pressure used, so on and so forth, so is there not some sort of correlation
23 between different pressure values, if you will, in temperature?

24 MR. CARIDI: Yes, I believe there is, but that again is using the
25 temperature compensation. So in other words, what Sugawara is doing is
26 they are first setting air pressure to temperature and then making the

1 adjustment to the temperature.

2 So they are not in fact using -- they are not setting three separate or a
3 plurality of separate classes of air pressure and then listing voltages to
4 temperatures inside of those, then selecting a voltage based on the
5 temperature --

6 JUDGE JEFFERY: For that class --

7 MR. CARIDI: -- within that class.

8 JUDGE JEFFERY: -- that class of pressure, yeah.

9 MR. CARIDI: Yes, Your Honor.

10 JUDGE JEFFERY: Okay.

11 MR. CARIDI: And again, just to comment a little bit further on that,
12 it's -- the majority of the embodiments in Sugawara are doing away with the
13 barometer. Obviously, the first embodiment there does use it, the barometer,
14 the S-10, S-11 steps.

15 But just about all of these other embodiments where they do refer to
16 air pressure in regards to temperature and calculating the T-zero, what
17 they're doing is based on the movement of the fans, the velocity or the
18 voltage that's being used, coming up with a temperature compensation.

19 And I can -- if you'd like, I can cite for the record all of the sections
20 where they refer to a barometer not being necessary.

21 But I believe in all the embodiments, 2 through 6, do away with the
22 barometer. So all of the sections where they're talking about adjusting air
23 pressure to temperature they're not utilizing a barometer. They're trying to
24 take that -- Sugawara is trying to take that feature out, and in fact, I'll read
25 the very last paragraph before the claim start on column 15.

26 "Furthermore, since the temperature compensation can be performed

1 by using the fan rotational frequency or the applied voltage value while
2 changes according to the air pressure, a projection type display which is
3 simple and requires less costs increase is realized without increasing the
4 number of new members for the air pressure detection and at the same time
5 suppressing the larger and heavier apparatus."

6 So what that is saying in effect is that they can make this adjustment
7 without including a barometer in the device, which is one of the goals of
8 Sugawara -- of many of the embodiments of Sugawara, so if I can conclude,
9 Sugawara discloses manipulating fan controls based on temperature
10 compensation values.

11 That is not the temperature that is directly taken from the temperature
12 sensor. The temperature compensation value may be derived based on
13 readings from an air pressure sensor. However, this does not anticipate the
14 present claims because there's not break out the table stored -- in our storage
15 means.

16 Since the present invention requires this, namely, a control table
17 representing the relationship between the temperature detected by the
18 temperature sensor and the value of the control voltage for the driving circuit
19 of the cooling fan for each of the plurality of classes into which the outside
20 air pressure is divided, none of these various embodiments of Sugawara
21 teach this feature, either expressly or inherently, and therefore, it cannot
22 anticipate the claims as presented under 35 U.S.C. Section 102.

23 JUDGE HAIRSTON: Okay. Any questions?

24 JUDGE JEFFERY: None from me.

25 JUDGE NAPPI: No.

26 JUDGE HAIRSTON: Thank you, counselor.

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1 MR. CARIDI: Thank you, Your Honor. Have a good day.
2 (Whereupon, the proceedings at 10:03 a.m. were concluded.)